

2021 MAY -6 PM 1:39
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No. 55581-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Stuart McColl

Appellant

v.

Geoffrey Anderson
Charlotte Anderson

Respondents,

APPELLANTS' OPENING BRIEF

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WAC 51-54A-307.4.2	3,6

A. Assignment of Error and Issue

An RCW 10.14 order signed by Judge Neupert prohibited the Appellant's surveillance of the Respondent's illegal activity immediately adjacent to the Appellant's property. CP Page 20 "Surveillance". This Appellant challenged that order in Superior Court and Judge Erikson denied the Appellant's motion for Reconsideration. CP Page 15

RCW 10.14.190 prohibits an RCW 10.14 order that violates the Appellant's Constitutional right to Procedural Due Process to surveillance of the Respondent's unrepentant continuous illegal burning activities that compromise the Appellant's Constitutional Property Right to peaceful enjoyment of his property.

B. Statement of the Case

The Respondents have not challenged any of the evidence presented showing regular and continuous violations of these fire and clean air codes: RCW 9A.48.050, RCW 70.94, WAC 173-425-050(4), WAC 173-425-050(1), WAC 51-54A-307.4.2 CP Page 30-35, 61-93 The Respondents appear to believe they are above the law.

The Respondents apparently demanded a right to violate all fire and clean air act codes when Sheriff's Deputy Stoppani was summoned there by Fire Chief Phillips to stop the Respondent's reckless burning. The Respondent told Deputy Stoppani "... he will restart it the next day" when directed to put his fire out. CP Page 71 The Respondent had originally refused the Fire Chief Sam Phillip's demand to put the fire out requiring

the Fire Chief to summons the backup from the Sheriff's department. CP
Page 90 The Sheriff's Deputy wrote a report citing the Respondent's
behavior that day as Criminal Negligent Burning in the 2nd Degree. CP
Page 70/71 This series of events and evidence is unchallenged by the
Respondents and apparently represents their position in this case.

In another 5 day spree last October 2020 the Respondents apparently
unleashed a smoke storm that overwhelmed the Appellant's property with
smoke on 5 days wherein the particulate pollution was so high the
pollution monitor used was topped out at 999.99 parts per million
"Hazardous". CP Pages 28-35 The Appellant was unable to photograph
and attach the incident directly to the Respondent because the court order
issued prohibited surveillance of the Respondent's illegal activities.

Respondents appear to maintain some kooky right to burn whatever
they want including illegal construction materials including plywood (CP
Page 67) , whenever they want and any smoke or danger created by them
is the Appellant's problem. Respondents apparently believe they are
above the law and that Fire Codes and the WA State Clean Air Act does
not apply to them.

The Appellant here argues he has a Due Process Constitutional Right
to pursue the Respondent's illegal activity through surveillance and
observation and turn the observed violations over to the Authorities or use
information collected through surveillance to pursue nuisance actions
against the Respondent's. The RCW 10.14 order signed by Judge Neupert
compromises the Appellant's Due Process Constitutional Rights because it

prevents him from legal remedies which are guaranteed to him. RCW 10.14.190 prohibits denial of Constitutional Rights.

Without a clear recognition of the Appellant's Due Process right to surveillance in direct relation to the Respondent's non-stop illegal activities, even a Court Order obtained by the Appellant through a legal action, for instance through a nuisance action, would be moot if the Appellant were to have no access to surveillance of the pattern of illegal activity prohibited under such an order.

C. AUTHORITY & ARGUMENT

RCW 10.14.190 forbids any RCW 10.14 order from violating anyone's Constitutional rights. Removing the ability to photograph violations of law of obvious repeat offenders in property immediately adjacent to a person's home is a violation of Due Process because it prevents a home owner from collecting evidence he will need to enforce the law, and protect his right to peacefully enjoy his property and health. CP 93-108 (Dept. of Ecology How Wood Smoke Harms Your Health)

The Constitutions of WA State and the United States guarantee property owners the peaceful enjoyment of their property and due process to remedies should that peaceful enjoyment be insulted through the violation of criminal and civil statutes. Statutes and laws in WA State regulate fire on residential property for safety and health reasons. Violations of such statutes by one neighbor, complained of by another neighbor, give the badly affected neighbor Substantive Due Process rights

to pursue the violating neighbor and surveillance of violations of law is part of that pursuit.

The Respondent's violations of fire codes and clean air statutes are numerous and unrepentant and were listed in the appeal filed in Superior Court (see CP page 24 lines 9/10) with supporting unchallenged evidence (see CP Pages 61-93) :

- 9A.48.050 Criminal Gross Misdemeanor
- RCW 70.94 WA State's Clean Air Act
- WAC 173-425-050(4) WA State's Clean Air Act
- WAC 173-425-050(1) Burning prohibited materials
- WAC 51-54A-307.4.2 Burning too close to structures

Surveillance serves a legitimate purpose when it is a response to a pattern of illegal, unrepentant behavior that adversely affects another. The Appellant here has not chosen to upset the RCW 10.14 order in general ... because ... the Appellant has zero interest and never did in having any contact with the Respondents. The Appellant's only interest, along with the Fire Chief Phillips and Sheriff's Deputy Stopanni, is in stopping the Respondent's ongoing violations. Surveillance leads to that end, and is therefore legitimate in this series of circumstances as defined in RCW 10.14.030 (4a & 4b) . No evidence or statements from the Respondents indicate they have any interest in stopping the illegal burning.

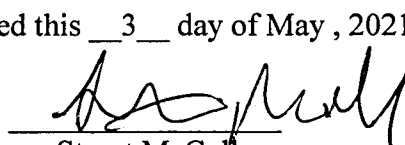
Without access to surveillance of the Respondents' civil violations and criminal activity, and especially when the Respondent perpetrator acts with no repentance, habitually violates several fire and clean air codes,

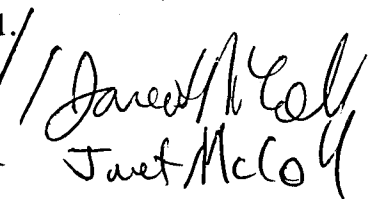
and wherein the Respondents also appear to demand a kooky right to violate the statutes at will, this Appellant's Constitutional Due Process rights are denied in violation of RCW 10.14.190 itself.

D. Conclusion

Every property owner has a Constitutional right to peacefully enjoy his property. Our legislature has laid out clear statutes regarding fire in residential areas to protect the safety and health of its citizens. A habitual violator of these statutes violates the rights of his/her neighbor and that affected neighbor has a Constitutional Due Process right to access the courts to stop such behavior. An RCW 10.14 order that prevents anyone from surveillance of a clear and un-repentant pattern of fire and Clean Air Act code violations by a neighbor immediately adjacent to his property denies that person his Due Process rights and is therefore in violation of RCW 10.14.190. The RCW 10.14 Order in this case must be struck down and the Appellant's Constitutional Due Process rights must be recognized and restored.

Respectfully submitted this 3 day of May, 2021.


Stuart McColl


Janet McColl

